

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

TERRAFORM LABS, PTE. LTD. and DO
HYEONG KWON,

Defendants.

Civil Action No. 23 Civ. 1346 (JSR)

Hon. Jed S. Rakoff

**NOTICE OF DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND TO
EXCLUDE EXPERT OPINIONS UNDER *DAUBERT***

PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. P. 56, paragraph 2(d) of the Individual Rules of Practice for the Honorable Jed S. Rakoff, and paragraph (E) of the case management plan for the above-captioned case (Dkt. No. 44), Defendants intend to move for summary judgment (the "Motion") on all claims in the Amended Complaint, on the following grounds:

- (1) There is no genuine issue of material fact that the SEC is precluded from claiming that Defendants offered or sold "securities" within the meaning of the Securities Act of 1933 or the Securities Exchange Act of 1934;
- (2) There is no evidence to support the SEC's claim that Defendants offered or sold "securities" within the meaning of the Securities Act of 1933 or the Securities Exchange Act of 1934;
- (3) There is no genuine issue of material fact that, even if Defendants were found to have offered or sold securities, such offers and/or sales were exempt from the registration requirement of Section 5 of the Securities Act of 1933;

- (4) There is no genuine issue of material fact that Defendants did not offer or sell any unregistered security-based swaps; and
- (5) There is no evidence to support the SEC's claims that Defendants made, with scienter or negligence, any materially false or misleading statement in, or in connection with, the offer or sale of any digital asset.

Pursuant to the case management plan, the Motion shall be briefed and heard on the following schedule:

Defendants' moving papers:	Served on or before October 27, 2023
Plaintiff's answering papers:	Served on or before November 10, 2023
Defendants' reply papers:	Served on or before November 17, 2023
Oral argument:	November 30, 2023 at 4:00 p.m.

In addition, in accordance with the Court's minute entry issued on October 20, 2023, Defendants intend to move under Fed. R. Evid. Rules 702, 703, and *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), on the following schedule:

Defendants' moving papers:	Served on or before October 27, 2023
Plaintiff's answering papers:	Served on or before November 7, 2023
Defendants' reply papers:	Served on or before November 10, 2023
<i>Daubert</i> hearing:	November 17, 2023 at 2:00 p.m.

Dated: October 20, 2023
New York, New York

Respectfully submitted,

/s/ Douglas W. Henkin

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